88-269

Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1988

Case No.

Henry Haines Stockton,

Petitioner,

v.

Beverly Ann Lansiquot, John Wells, Patricia Ann Riedel, Joyce Roderick Londono, Sarasota County Public Hospital Board, Florida Patient Compensation Fund,

Respondents.

From The United States Court Of Appeals For The Eleventh Circuit

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THE PETITION FOR WRIT OF CERTIORARI

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THE QUESTION PRESENTED

WHETHER THE ELEVENTH CIRCUIT COURT OF APPEALS FAILED TO DISTINGUISH THE PERSONAL CLAIMS OF HENRY HAINES STOCKTON, INDIVIDUALLY, FROM THOSE CLAIMS MADE BY HENRY HAINES STOCKTON AS PERSONAL REPRESENTATIVE OF HIS DECEASED WIFE'S ESTATE, IN REVIEWING AN APPLICATION OF THE FLORIDA DOCTRINE OF RES JUDICATA.

THE PARTIES

HENRY HAINES STOCKTON,	Petitioner
BEVERLY ANN LANSIQUOT,	Respondent
JOHN WELLS,	Respondent
PATRICIA ANN RIEDEL,	Respondent
JOYCE RODERICK LONDONO,	Respondent
SARASOTA COUNTY PUBLIC HOSPITAL BOARD,	Respondent
FLORIDA PATIENTS' COMPENSATION FUND,	Respondent

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REFERENCE TO OFFICIAL REPORT OF OPINION

A reprinted copy of the opinion of the United States Court of Appeals, Eleventh Circuit, is appended at pages A-1 to 11, inclusive, and is referenced by West Publishing Company as Stockton v. Lansiquot, 838 F.2d 1545 (11th Cir. 1988).

JURISDICTIONAL GROUNDS

(1) The date of the Judgment to be reviewed is March 10, 1988. It was entered on March 10, 1988. (A reprinted copy is appended at pages A-12,13.)

(2) The date of the Order denying the PETITION FOR REHEARING is April 14, 1988. It was entered on April 14, 1988. (A reprinted copy is appended at pages A-14, 15.)

(3) The date of the Order granting Summary Judgment to Respondents in the United States District Court for the Middle District of Florida, is November 25, 1986. It was entered on November 25, 1986. (A reprinted copy is appended at pages A-16 to 25, inclusive.)

(4) The basis for federal jurisdiction in the court of first instance was that Petitioner, a citizen of New Jersey, and Ruth Burchell Stockton, deceased, sued

citizens of Florida and St. Croix, the U.S. Virgin Islands, for deprivation of rights, privileges, immunities, freedoms and liberties under color of law of the State of Florida and under the First, Seventh, Eighth, Ninth and Fourteenth Amendments to the United States Constitution, Title 42, §1983 of the United States Code, and the United States Constitution, for an amount in controversy that exceeded $10,000.00.

(5) The authority conferring jurisdiction on this Honorable Court is the United States Constitution, Article IV, §1 (Full Faith and Credit Clause) and its implementation by statute under 28 USC §1738.

CONSTITUTIONAL AUTHORITY

(1) U.S. Constitution, Art. IV, §1.

(2) 28 USC §1738 in pertinent part:

> "Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken."

STATEMENT OF THE CASE

The Petitioner, Henry Haines Stockton, brought a suit in a Florida state court under the Florida Wrongful Death Act as personal representative of the estate of Ruth Burchell Stockton, who died in Sarasota Memorial Hospital, a defendant in that proceeding. The claims consisted of only those allowed under the Act. (§768.16 to §768.27, inclusive, Florida Statutes.) The Petitioner was the surviving spouse of the decedent and the beneficiary of her estate.

The claims under the Act for a survivor and beneficiary are derived from the decedent's death and the decedent's estate. Petitioner made no individual or personal claims in state court in his own right. There, the Petitioner was the plaintiff in the capacity of a personal

representative on behalf of the decedent and her estate.

The evidence presented in state court sought to prove negligence and hospital malpractice as well as damages allowed under the Act. The first trial resulted in a hung jury. The second trial was won by the Hospital. The judgment was affirmed on appeal without opinion by the Second District Court of Appeals of the State of Florida. Before the second trial, Petitioner filed suit in the U.S. District Court for the Middle District of Florida for his individual common law claims of breach of contract, fraud and violations of his constitutional and civil rights under 42 USC §1983. [Also similar claims were brought on behalf of his wife and her estate which are not the subject of this petition for a writ of certiorari.]

The Middle District Court granted summary judgment to the defendants on the basis of the preclusive effect of res judicata under Florida law relying on Migra v. Warren City School District Board of Education, 465 U.S. 75, 104 S.Ct. 892, 79 L.Ed. 2d 56 (1984) and Albrecht v. State, 444 So.2d 8 (Fla. 1984).

The Circuit Court of Appeals affirmed the judgment with opinion. (See A-1-11.) The Petitioner timely filed for a rehearing on the issue of his own personal claims being separate from those of his wife or her estate. On rehearing, Petitioner cited case law that had not been previously reviewed by the Court, in response to the authority relied upon in the opinion barring the personal claims of the Petitioner by res judicata. See Stockton at page 1546 and Shearn v. Or-

lando Funeral Home, 88 So.2d 591 (Fla. 1956).

The opinion identified the Petitioner's personal causes of action as the same as those brought in state court under the Wrongful Death Act requiring the same evidence, in contrast to Florida law which does not bar a second action personally brought by a widow who had acted as the executrix of an estate which sued in the first action under the Wrongful Death Act. (See A-6,7,8 and Shearn.)

The cases cited in opinion do not address the fact that a first claim was brought under the Wrongful Death Act and the second contains Mr. Stockton's personal claims. On page 1546 of the opinion, the Circuit Court relies on law predating the Wrongful Death Act (effective date 1972) regarding the identity of the parties. McGregor v. Provident Trust

Co., 119 Fla. 718, 162 So. 323 (1935); Hay v. Salisbury, 92 Fla. 446, 109 So. 617 (1926); Kline v. Heyman, 309 So.2d 242, cert. denied, 423 U.S. 1034, 96 S.Ct. 567, 46 L.Ed. 2d 408 (1975).

In Kline at page 244, the Second District Court of Appeals for the State of Florida sets forth the rule which is quoted by the 11th Circuit:

> "It is well settled Florida law that 'even though a party in a subsequent suit was not a named party in a prior suit, such party is bound by the prior judgment if he participated in the first proceeding or was represented by a party to that proceeding.'" (A-9, Stockton at page 1546.)

The facts of the cases cited above do not contain a claim under the Wrongful Death Act by a personal representative and then a second action by that same party suing in his own capacity. The facts of Kline consist of a suit to quiet title in Florida barred after an in per-

sonam action in Connecticut was decided against a husband who had his wife's consent to represent her in that proceeding. There, the husband and wife were alive. No estate was involved nor any wrongful death claim made. Both **McGregor** and **Hay** were decided before the Wrongful Death Act came into existence. The Act could not have been considered or reviewed in these cases.

Shearn was presented to the Circuit Court as the basis for a rehearing under its Florida Supreme Court ruling on identical facts to the federal case at bar. **Shearn** was set forth as the controlling authority, effectively overruling **McGregor**, **Hay** and **Kline** for the reason it deals with the identity of a cause of action under the Wrongful Death Act and a subsequent personal action by the former personal representative, while the cases

relied upon by the Circuit Court do not.

The petition for rehearing was denied per curiam on April 14, 1988. (A-14,15.)

ARGUMENT

The writ of certiorari should be granted for the reason that the opinion and judgment of the Circuit Court failed to follow the **Migra** rule laid down by this Honorable Court. The Court did not apply the law of Florida under **Shearn**. Instead the claims of Petitioner were inappropriately precluded under **Migra**.

The Florida law of res judicata does not bar a second suit involving the claims of a party who acted as a personal representative of the deceased spouse's estate that first sued under the Florida Wrongful Death Act. **Shearn.**

The Petitioner's claims discussed in this Petition do not consist of his rights as the beneficiary of his wife's estate or those derivative claims as her surviving spouse.

To find the wrongful death claims of the estate are the same as Mr. Stockton's personal claims, overlooks the prevailing Florida law of res judicata not cited by the Circuit Court in its opinion. (See Shearn.)

The United States Supreme Court mandated the preclusive effect of a state court judgment by applying the law of res judicata in that state. Migra. This rule has been cited by the Circuit Court in its opinion, but misapprehended. The Florida law of res judicata has not been applied to Mr. Stockton's separate claims. Shearn. Stockton at page 1546. A-8,9.

Specifically, the Florida Supreme Court under identical facts sub judice, did not bar a second action by a widow who sued as the administrator of her husband's estate in the first action for

wrongful death on the same facts. Shearn.

Shearn is the law of res judicata in Florida governing a second suit for the personal claims of a party who acted as the administrator (now personal representative) of her deceased husband's estate that first sued under the Wrongful Death Act. Shearn at pages 592 and 593. Florida Statutes Annotated §§768.01-768.04 (repealed and replaced by §§768.17-768.21, inclusive, §95.11, Florida Statutes).

Shearn has not been changed nor overruled by later case law. It has been continuously upheld by the Florida Supreme Court.

Conceding arguendo that the Circuit Court's opinion at page 1546 accurately bars relitigating

> "... the federal claims of an unconstitutional deprivation of

Ruth Stockton's right to life...", (A-7.)

where does the rule operate to bar the husband's claims for breach of contract and violation of his constitutional rights under Florida law to be free to contract elsewhere and to be free from "concealment" of physical restraint of his wife at the time she was admitted.

The proofs of these claims were not relevant to the state case. The admitting nurse did not testify at trial in state court. Mr. Stockton was deprived of his freedom to choose another health care provider that would not have restrained his wife. "Concealment" of the physical restraint (as opposed to the restraint itself) is a separate and intentional tort. It is also a fraud. It was not relevant to the evidence of the standard of care owed to Mrs. Stockton,

in the estate's hospital malpractice claim.

The concealment of physical restraint also relates to whether the contract was breached and whether Mr. Stockton was deprived of the protection Florida law offers one in contracting with a health care provider. (See §394.459, Florida Statutes.) His wife was unable to choose her care due to her mental illness and incapable of communicating to her husband that she was being restrained which caused her death. His rights emanating from the concealment are separate from the alleged wrongful death caused by the act that was concealed. Simply stated, there were separate claims arising from separate acts. (Compare Shearn at page 593.)

Shearn carries the identical precedent of the second suit containing Mrs.

Shearn's claims of injury to herself and her property, while the first claim under the Wrongful Death Act, created

> "an entirely new cause of action, in an entirely new right..."

for the named beneficiaries which included her as a widow. Shearn at page 593. Shiver v. Sessions, 80 So.2d 905, 907 (Fla. 1955).

Both of the suits in Shearn were based upon the negligence of the same defendant, in the same accident and therefore, the parties were determined to be the same, however, the causes of action were not identical due to the rights created by the Wrongful Death Statute. F.S.A. §§768.01-768.04, inclusive; now §§768.17-768.21, inclusive, §95.11.

The opinion at page 1546 characterizes Mrs. Stockton's federal claim as a "right to life" deprivation, for which a

claim is not provided under the Act. A claim for his wife's actual loss of life was most certainly not provided to Mr. Stockton as a survivor or beneficiary in state court. (See §§768.16-768.27, inclusive.)

The Florida Supreme Court has historically regarded the bar of res judicata as a doctrine that

> "...should not be so rigidly applied as to defeat the ends of justice." Universal Construction Company v. City of Fort Lauderdale, 68 So.2d 366, 369 (Fla. 1953).

In Shearn the same Supreme Court consistently used the same principles in refusing to apply res judicata to identical facts to the case at bar.

In contrast, the opinion rendered herein relies on case law that is applied to different facts than found below. None of the cases cited in the opinion

involve a suit under the Wrongful Death Act by a personal representative, estate beneficiary or surviving spouse who subsequently brings claims in his own right. The Florida case law relied upon in the subject opinion predates the enactment of the Wrongful Death Act rendering those decisions inappropriate and in effect overruled by **Shearn** on our facts.

The Circuit Court states at page 1546 of the opinion "This is not meant to be a formalistic inquiry into the labels applied, . . ." when determining the identity of the causes of action. (A-6.) Then the Court opines that the same witnesses and evidence in the same sequence would be required in federal court without variation. This conclusion is truly absent an evaluation of Mr. Stockton's personal, constitutional, contractual rights and common law claims in contrast

to the first cause of action as "an entirely new right" under the Act. **Shearn** at page 593 citing to **Shiver** at page 907.

The Circuit Court's opinion overlooks the Wrongful Death Act as a statutory creature of specific claims which do not include a beneficiary's individual rights such as damage to that beneficiary's car, his person, his civil liberties or for breach of his contract. (§§768.01-04, inclusive; 768.17-768.21, inclusive; 95.11, Florida Statutes.)

Without the death of Ruth Stockton these "entirely new" rights would not exist. However, the personal claims of Henry Haines Stockton should and do exist regardless of her death and regardless of the Florida Wrongful Death Act.

CONCLUSION

The subject opinion's chilling effect alters the rights that accompany separate claims outside of an estate or outside of a wrongful death, which demonstrates the true need for a writ of certiorari. Should Mrs. Shearn have had to sue for the damage to her car involved in the accident when she brought the estate claim for her husband's wrongful death? The answer must assuredly be no, not anymore than Mr. Stockton should have had to bring his personal claims as an estate matter.

The writer strongly suggests the reason for the issuance of the writ should be twofold. First, the opinion abrogates the scope of the Florida Wrongful Death Act. The Act does not allow or provide for such personal claims on behalf of beneficiaries or survivors of the

estate, in their own right. Second, these and other individual claims shall be forfeited by the improper application of the **Migra** rule cited in the opinion, shortening various statutes of limitations to deprive claimants of their rights. The opinion gives a preclusive effect that does not belong in Florida wrongful death claims under the Act.

By the subject opinion, the Wrongful Death Act is dangerously expanded to require all beneficiaries and survivor's to file their personal claims at the time an estate sues for wrongful death, whether a claim arises from separate conduct such as concealment or from the same conduct such as causing a loss of life. This amplification of the Act is patently unfair and not intended under Florida law. **Shearn**; §§768.16 - 768.27, inclusive, Florida Statutes.

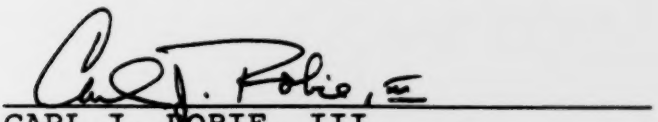
Because Ruth Stockton died, Henry Haines Stockton's personal causes of action should not be altered nor be considered the same as his wife's under Florida law. His claims are different under different laws supported by different facts and evidence. Shearn. Shiver. Migra.

The answer to the question presented for review in this petition is that the Eleventh Circuit Court of Appeals failed to distinguish the personal claims of the Petitioner from those claims he made as the personal representative of his deceased wife's estate when deciding whether the Florida doctrine of res judicata was correctly applied by the District Court.

The Petition for Writ of Certiorari should be granted and the writ issued

regarding the individual claims of Henry Haines Stockton.

Respectfully submitted,



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APPENDIX

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Judgment dated March 10, 1988 in The United States Court of Appeals for the Eleventh Circuit, Stockton v. Lansiquot, et al., No. 86-3871. . . . . A-12

Order dated April 14, 1988 On Petition For Rehearing in The United States Court of Appeals for the Eleventh Circuit, Stockton v. Lansiquot, et al., No. 86-3871. . . . . .A-14

Order dated November 25, 1986 granting Summary Judgment to Respondents in the U.S. District Court for the Middle District of Florida, Stockton v. Lansiquot, et al., No. 84-553-CIV-T-17. . . . .A-16

STOCKTON v. LANSIQUOT

Henry Haines STOCKTON,
Plaintiff-Appellant,

v.

Beverly Ann LANSIQUOT, John Wells, Patricia Ann Riedel, Joyce Roderick Londono, Sarasota County Public Hospital Board, Florida Patients' Compensation Fund, Defendants-Appellees.

No. 86-3871.

United States Court of Appeals,
Eleventh Circuit.

March 10, 1988.

Husband of patient who died in hospital brought civil rights suit against hospital, hospital employees, and hospital's insurer. The United States District Court for the Middle District of Florida, Docket No. 84-553-Civ-T-17, Elizabeth A. Kovachevich, J., entered

summary judgment in favor of defendants, and husband appealed. The Court of Appeals held that **res judicata** effect of final judgment in favor of hospital in state court suit brought by husband, as personal representative of patient's estate, for wrongful death of patient barred husband's federal civil rights suit against hospital, hospital employees, and hospital's insurer.

Affirmed.

1. **Federal Courts** [Key No. 420]

Federal court must apply law of state in which it sits with respect to **res judicata**, and is required by federal statute to give same preclusive effect to state court judgment as that judgment would enjoy in courts of state in which

it was rendered. 28 U.S.C.A. § 1738.

2. Judgment [Key No. 828(3.37)]

Res judicata effect of final judgment in favor of hospital in state court suit brought by husband, as personal representative of patient's estate, for wrongful death of patient barred husband's federal civil rights suit against hospital, hospital employees, and hospital's insurer. 42 U.S.C.A. § 1983.

Appeal from the United States District Court of the Middle District of Florida.

Before RONEY, Chief Judge, ANDERSON and EDMONDSON, Circuit Judges.

PER CURIAM:

Plaintiff Henry Haines Stockton appeals a summary judgment in favor of

defendants in this case which arose out of the circumstances surrounding his wife's death during her stay at Sarasota Memorial Hospital. The district court held that Stockton's claims against the Hospital were barred by the **res judicata** effect of a final judgment rendered in favor of the Hospital in a suit tried to a jury in state court and affirmed on appeal on substantially the same issues and claims as those asserted in the instant case. **See H. Haines Stockton v. Sarasota County Public Hospital Board,** No. 84-2042 (Fla. 2d DCA June 2, 1985) (affirming without opinion). We affirm.

[1,2] A federal court must apply the law of the state in which it sits with respect to **res judicata**, and is required under 28 U.S.C.A. § 1738 to give the same

preclusive effect to a state court judgment as that judgment would enjoy in the courts of the state in which it was rendered. **Migra v. Warren City School Dist.**, 465 U.S. 75, 77 n. 1, 104 S.Ct. 892, 894 n. 1, 79 L.Ed.2d 56 (1984); **McDonald v. Hillsborough County School Bd.**, 821 F.2d 1563, 1565 (11th Cir. 1987). Under Florida law, the doctrine of res judicata applies when four "identities" exist: (1) identity of the thing sued for, (2) identity of the cause of action, (3) identity of the parties, and (4) identity of the quality of the person for or against whom the claim is made. **Albrecht v. State**, 444 So.2d 8, 12 (Fla. 1984). The district court properly found that these four identities are present between this case and the state case which was basically brought under the

wrongful death statute in Florida, and for breach of the Hospital's duty under state law.

First, as to the identity of things sued for, plaintiff in the state proceeding sued for money damages for the loss of his wife's companionship, services and protection; for his own pain and suffering; and for the hospital's breach of its obligation to provide adequate care and its failure to promulgate effective rules insuring decedent's safety. The same recovery is sought in this suit.

Second, there is an identity in the causes of action. This is not meant to be a formalistic inquiry into the labels applied, instead the "determining factor in deciding whether the cause of action is the same is whether the facts or evidence necessary to maintain the suit are

the same in both actions." **Albrecht**, 444 So.2d at 12. The same witnesses would be asked to testify to the same sequence of events in federal court as they had previously done in state court. Thus, while in state court plaintiff pursued a wrongful death action and here asserts deprivation of civil rights under 42 U.S.C.A. § 1983, both suits "**could have been**" initially pursued in either state or federal court without any variation in the presentation of facts or evidence. **Albrecht**, 444 So.2d at 12; **see McDonald**, 821 F.2d at 1565. Comparing the state and federal complaints, it is evident that the federal claims of an unconstitutional deprivation of Ruth Stockton's right to life would depend upon the very same facts and evidence as were necessary to maintain the prior state wrongful

death action. The federal breach of contract action is similarly premised upon allegations that the Hospital failed to provide plaintiff's wife with due care, which was at the heart of plaintiffs failed attempt to prove negligence in the state forum.

Third, as to the identity of parties or their privies, it is not necessary that there be an exact identity of the parties. A judgment is conclusive as to those in privity with the parties. **McGregor v. Provident Trust Co.**, 119 Fla. 718, 162 So. 323 (1935); **Hay v. Salisbury**, 92 Fla. 446, 109 So. 617 (1926). There is no cognizable distinction between the plaintiffs. Stockton suing on his own behalf in the federal action is essentially the same as his appearing as personal representative of decedent's

estate in the state action. It is well settled Florida law that "even though a party in a subsequent suit was not a named party in a prior suit, such party is bound by the prior judgment if he participated in the first proceeding or was represented by a party to that proceeding." **Kline v. Heyman**, 309 So.2d 242, **cert. denied**, 423 U.S. 1034, 96 S.Ct. 567, 46 L.Ed.2d 408 (1975).

The defendants in the two actions are also sufficiently similar to fit within the third identity of **res judicata** under Florida law. The individual defendants are all employees of the Hospital, and the Florida Patients' Compensation Fund (the Fund) is an insurer of the Hospital. The actions of the individual defendants were implicated in the state wrongful death action which sought vicarious lia-

bility of the Hospital. The Fund has a contractual relationship with the Hospital and that relationship has created a commonality of interests for purposes of defending against plaintiff's claims. Thus, while the parties to the federal action may be nominally different from those in the state action, they are in effect the very same parties. Knabb v. Duner, 143 Fla. 92, 196 So. 456 (1940).

Fourth, the identity of the quality of the persons for or against whom the claim is made is apparent. The test is whether the parties in the state action had the incentive to adequately litigate the claims in the same character or capacity as would the parties to the federal action. Ford v. Dania Lbr. & Supply Co., 150 Fla. 435, 7 So.2d 594 (1942). This same plaintiff sued the same defendants

for relief on substantially the same claim, arising from the same circumstances, and raised the same underlying issues in the federal proceeding as he had previously raised in the state proceeding.

The district court properly granted defendants' motion for summary judgment on the ground of **res judicata** as matters outside the pleadings were considered. 18 C. Wright, A. Miller & E. Cooper, **Federal Practice & Procedure** § 4405; **Capitol Funds, Inc. v. Arlen Realty, Inc.**, 755 F.2d 1544, 1546-47 (11th Cir. 1985).

AFFIRMED.

UNITED STATES COURT OF APPEALS

For The Eleventh Circuit

No. 86-3871

D.C. Docket No. 84-553

HENRY HAINES STOCKTON,

Plaintiff-Appellant,

versus

BEVERLY ANN LANSIQUOT,
JOHN WELLS,
PATRICIA ANN RIEDEL,
JOYCE RODERICK LONDONO,
SARASOTA COUNTY PUBLIC HOSPITAL BOARD,
FLORIDA PATIENTS' COMPENSATION FUND,

Defendants-Appellees.

Appeal from the United States District Court for the Middle District of Florida

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Before RONEY, Chief Judge, ANDERSON and EDMONDSON, Circuit Judges

J U D G M E N T

This cause came on to be heard on the transcript of the record from the United States District Court for the

Middle District of Florida, and was argued by counsel;

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby, AFFIRMED;

It is further ordered that plaintiff-appellant pay to defendants-appellees, the costs on appeal to be taxed by the Clerk of this Court.

Entered: March 10, 1988

For the Court: Miguel J. Cortez, Clerk

By: /S/ Karleen McNave
Deputy Clerk

ISSUED AS MANDATE: Apr 22 1988

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No.
86-3871

HENRY HAINES STOCKTON,

Plaintiff-Appellant,

versus

BEVERLY ANN LANSIQUOT,
JOHN WELLS,
PATRICIA ANN RIEDEL,
JOYCE RODERICK LONDONO,
SARASOTA COUNTY PUBLIC HOSPITAL BOARD,
FLORIDA PATIENTS' COMPENSATION FUND,

Defendants-Appellees.

Appeal from the United States District Court for the Middel (sic) District of Florida

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ON PETITION(S) FOR REHEARING
(April 14, 1988)

BEFORE: RONEY, ANDERSON and EDMONDSON, Circuit Judges.

PER CURIAM:

The petition(s) for rehearing filed

by appellant, Henry Haines Stockton, is denied.

ENTERED FOR THE COURT:

/S/ Paul H. Roney
United States Circuit Judge

ORD-41

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA TAMPA DIVISION

HENRY HAINES STOCKTON,

Plaintiff,

vs. Case No. 84-553-CIV-T-17

BEVERLY ANN LANSIQUOT, et al.,

Defendants. /

ORDER GRANTING MOTIONS FOR SUMMARY JUDGMENT

This cause is before the Court on motions for summary judgment filed by Defendants on May 29, 1886. (sic)

This circuit clearly holds that summary judgment should only be entered when the moving party has sustained its burden of showing the absence of a genuine issue as to any material fact when all the evidence is viewed in the light most favorable to the nonmoving party. Sweat v. The Miller Brewing Co., 708 F.2d (sic) (5th Cir. 1969). Factual disputes preclude summary judgment. In this case,

this Court is satisfied that summary judgment is appropriate.

The following facts are not in dispute, as presented to the Court in the Joint Memorandum of Parties submitted on July 25, 1986:

1. At all times material hereto, Decedent Ruth Stockton was the wife of H. H. Stockton, who is personal representative of her estate and who is the estate's sole residuary legatee.

2. At all times material hereto, defendant Hospital, through its employees, knew Decedent was in a highly disturbed emotional state and that she was incapable of caring for herself.

3. On February 15, 1981, Decedent was confined to her bed by Hospital employees through the use of a posey and guard-rails that were attached to her bed.

4. Decedent died on July 15, 1981.

5. Mr. Stockton filed a wrongful death action in the circuit court in and for Sarasota County, Florida, H. Haines Stockton v. Sarasota County Public Hospital Board, 81-1907-CA-01.

6. The state wrongful death action was tried; the first trial ended in a mistrial, due to a hung jury.

7. A second trial was held which ended in a jury verdict, finding no negligence on the part of the Defendants. This judgment was affirmed on appeal.

8. The Second Amended Complaint and Answers to that complaint, attached to the joint memo, are true and correct copies of the Complaint and Answer in the state proceedings.

9. Defendant Hospital is and has been, at all material times, an agency or political subdivision of the State of

Florida, a body politic and public.

The legal memoranda in support of the motions for summary judgment are well-supported and highly persuasive, and this Court hereby incorporates them by reference.

A comparison of the Plaintiff's state and federal complaints clearly shows that the same factual issues underlie each complaint. The conduct of the Hospital and its staff (now named as individual defendants) is the central issue. Although the allegations are now bad faith, breach of contract and unconstitutional deprivation, the underlying acts or alleged omissions in question are still the same.

It is noted by the Court that the state court complaint was brought by H. Haines Stockton as personal representative. However, Count II of that complaint

asks for damages to be awarded to H. Haines Stockton as husband and survivor, for the loss of his wife's companionship, services, protection, and for his own pain and suffering.

Count III asks for money damages due to the Hospital's alleged breach of its agreement with Stockton to provide adequate nursing care and to promulgate rules and regulations necessary for the decedent's safety.

Count IV was for loss of support for Stockton due to the loss of support from a trust in decedent's name. Due to these factors, the Court is satisfied as to the identity of parties necessary for res judicata.

After careful consideration, this Court also finds that the causes of action are the same due to the identity of facts and evidence necessary to prove

all claims. This Court determines that the underlying factual issues raised by Stockton's complaint have already been litigated, or could have been litigated, during the state case. This Court takes judicial notice of the court record in Stockton v. Sarasota County Public Hospital Board, et al., Case No. 81-1907-CA-01, in the Twelfth Judicial Circuit in and for Sarasota County and the appellate record in that case, Appeal No. 84-2042, in the Second District Court of Appeals, Lakeland. The Court specifically takes notice of the pleadings, the trial transcript, the appellate briefs, the orders, final judgment and appellate decisions.

Under the authority of Migra v. Warren City School District Board of Education, 465 U.S. 75, 79 L.Ed.2d 56, 104 S.Ct. 892 (1984), and Albrecht v. State, 444 So.2d 8, 11-12 (Fla. 1984), it is

clear that the allegations in the federal complaint which were raised, or could have been raised at the state level, are now barred.

One issue that could not have been previously raised is the allegation that the plaintiff was deprived of a fair trial. The complaint alleges that defendants Wells and Lodono (sic) gave "inconsistent" or "ambiguous" testimony which led to a mistrial. This bare allegation does not state a cause of action upon which relief can be granted. It should be noted that there was a subsequent trial, which <u>did</u> result in a verdict, although unfavorable to the Plaintiff. That verdict was upheld on appeal.

The Supreme Court of the United States has established standards to be used in evaluating motions for summary judgment and the responses thereto. In

Celotex Corp (sic) v. Catrett, 477 U.S. ___, 91 L.Ed 2d 265, 106 S.Ct ___ (1986), the Court said,

> Rule 56(e) therefore requires the nonmoving party to go beyond the pleadings and by her own affidavits, or by the "depositions, answers to interrogatories, and admissions on file," designate "specific facts showing that there is a genuine issue for trial."

This Court noticed the Plaintif, (sic) giving him ten (10) days to supplement his response to the motions for summary judgment, using the standards set forth in Celotex, in the Court's order of November 12, 1986. However, the Plaintiff was unable to make any showing of fact or evidence which would negate the the (sic) bar of res judicata, or of collateral estoppel. Even without these bars, the motions for summary judgment would prevail.

A jury of six reasonable people con-

sidered the facts and the evidence which are necessary to support the Plaintiff's case. After considering all of the factors the Plaintiff would again call into question, that jury found that the Hospital's conduct, and that of its staff, were not negligent. That record is part of the record supporting the motions for summary judgment. The facts themselves are taken by this Court to be true, as well as the jury's assessment of those facts.

The Plaintiff has provided no facts or new evidence to show that the issues he (sic) that now raises would have any different outcome than that at the state level. He has been unable to provide this Court with affidavits, depositions, or any evidence in support of the federal complaint that would show that the case, if it went to trial, could survive

a motion for directed verdict.

In this case the Court is satisfied that there are no genuine issues of material fact. Evaluating the motions and the responses thereto, in light of the standards set forth by the Supreme Court of the United States in Celotex Corp. v. Catrett, 477 U.S. ___, 91 L.Ed. 2d 265, 106 S.CT. (sic) _____., (1986), and in Anderson v. Liberty Lobby, Inc., 477 U.S. ___, 91 L Ed 2d 202, 106 S Ct ___, as well as on the basis of res judicata and collateral estoppel, the motions for summary judgment as to all defendants are hereby **Granted.** The Clerk is directed to close this case.

DONE AND ORDERED in Chambers, in Tampa, Florida, this 25th day of November, 1986.

/s/ ELIZABETH A. KOVACHEVICH
ELIZABETH A. KOVACHEVICH
United States District Judge